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ON LAW

William
Godwin

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Introductory Note

We reproduce the chapter on Law from William Godwin's "Enquiry Concerning Political Justice". Although this analysis of the effects of law was published more than a hundred and fifty years ago, it still retains its value as an indictment of this pernicious institution, and the points which Godwin made have become more rather than less relevant through the growth of legal institutions during the intervening period. The chapter has been slightly abridged, in particular to eliminate references to other parts of the book which would only confuse the reader of a single chapter, but nothing of importance has been left out.

ON LAW

(from An Enquiry Concerning Political Justice, 1793)

Law is without doubt one of the most important topics upon which human intellect can be employed. It is law which has hitherto been regarded in countries calling themselves civilised as the standard by which to measure all offences and irregularities that fall under public animadversion. Let us fairly investigate the merits of this choice.

The comparison which has presented itself to those by whom the topic has been investigated has hitherto been between law on one side and the arbitrary will of a despot on the other. But if we would fairly estimate the merits of law, we should first consider it as it is in itself, and then, if necessary, search for the most eligible principle that may be substituted in its place.

It has been recommended as 'affording information to the different members of the community respecting the principles which will be adopted in deciding upon their actions'. It has been represented as the highest degree of iniquity 'to try men by an *ex post facto* law, or indeed in any other manner than by the letter of a law formally made and sufficiently promulgated'.

How far it will be safe altogether to annihilate this principle we shall presently have occasion to enquire. It is obvious at first sight to remark that it is of most importance to a country where the system of jurisprudence is most capricious and absurd. If it be deemed criminal in any society to wear clothes of a particular texture or buttons of a particular composition, it is natural to exclaim that it is high time the jurisprudence of that society should inform its members what are the fantastic rules by which they mean to proceed. But if a society be contented with the rules of justice and do not assume to itself the right of distorting or adding to those rules, there law is evidently a less necessary institution. The rules of justice would be more clearly and effectually taught by an actual intercourse with human society unrestrained by the fetters of pre-possession than they can be by catechisms and creeds.

THE MULTIPLICITY OF LAWS

One result of the institution of law is that the institution once began can never be brought to a close. Edict is heaped upon edict, and volume upon volume. This will be most the case where the government is most popular and its proceedings have most in them of the nature of deliberation. Surely this is no slight indication that the principle is wrong, and that of consequence the farther we proceed in the path it marks out to us, the more shall we be bewildered. No task can be more hopeless than that of effecting a coalition between a right principle and a wrong. He that seriously and sincerely attempts it will perhaps expose himself to more palpable ridicule than he who instead of professing two opposite systems should adhere to the worst.

There is no maxim more clear than this, Every case is a rule to itself. No action of any man was ever the same as any other action, had ever the same degree of utility or injury. It should seem to be the business of justice to distinguish the qualities of men and not, which has hitherto been the practice, to confound them. But what has been the result of an attempt to do this in relation to law? As new cases occur, the law is perpetually found deficient. How should it be otherwise? Lawgivers have not the faculty of unlimited prescience and cannot define that which is infinite. The alternative that remains is either to wrest the law to include a case which was never in the contemplation of the author or to make a new law to provide for this particular case. Much has been done in the first of these modes. The quibbles of lawyers and the arts by which they refine and distort the sense of the law are proverbial. But though much is done, everything cannot be thus done. The abuse would sometimes be too palpable. Not to say that the very education that enables the lawyer, when he is employed for the prosecutor, to find out offences the lawgiver never meant enables him, when he is employed for the defendant, to find out subterfuges that reduce the law to a nullity. It is therefore perpetually necessary to make new laws. These laws, in order to escape evasion, are frequently tedious, minute and circumlocutory. The volume in which justice records her prescriptions is forever increasing, and the world would not contain the books that might be written.

THE UNCERTAINTY OF LAW

The consequence of the infinitude of law is its uncertainty. This strikes directly at the principle upon which law is founded. Laws were made to put an end to ambiguity, and that each man might know what he had to depend upon. How well have they

answered this purpose? Let us instance in the article of property. Two men go to law for a certain estate. They would not go to law if they had not both of them an opinion of their success. But we may suppose them partial in their own case. They would not continue to go to law if they were not both promised success by their lawyers. Law was made that a plain man might know what he had to depend upon, and yet the most skilful practitioners differ about the event of my suit. It will sometimes happen that the most celebrated pleader in the kingdom, or the first counsel in the service of the crown, shall assure me of infallible success five minutes before another law officer, styled the keeper of the king's conscience, by some unexpected juggle decides it against me. Would the issue have been equally uncertain if I had had nothing to trust to but the plain, unperverted sense of a jury of my neighbours, founded in the ideas they entertained of general justice? Lawyers have absurdly maintained that the expensiveness of law is necessary to prevent the unbounded multiplication of suits; but the true source of this multiplication is uncertainty. Men do not quarrel about that which is evident, but that which is obscure.

He that would study the laws of a country accustomed to legal security must begin with the volumes of the statutes. He must add a strict enquiry into the common or unwritten law; and he ought to digress into the civil, the ecclesiastical and canon law. To understand the intention of the authors of a law he must be acquainted with their characters and views, and with the various circumstances to which it owed its rise and by which it was modified while under deliberation. To understand the weight and interpretation that will be allowed to it in a court of justice he must have studied the whole collection of records, decisions and precedents. Law was originally devised that ordinary men might know what they had to depend upon,

and there is not at this day a lawyer existing in Great Britain presumptuous and vain-glorious enough to pretend that he has mastered the code. Nor must it be forgotten that time and industry, even were they infinite, would not suffice. It is a labyrinth without end; it is a mass of contradictions that cannot be extricated. Study will enable the lawyer to find in it plausible, perhaps unanswerable arguments for any side of almost any question; but it would argue the utmost folly to suppose that the study of law can lead to knowledge and certainty.

A farther consideration that will demonstrate the absurdity of law in its most general acceptation is that it is of the nature of prophecy. Its task is to describe what will be the actions of mankind and to dictate decisions respecting them. The language of such a procedure is, "We are so wise that we can draw no additional knowledge from circumstances as they occur; and we pledge ourselves that, if it be otherwise, the additional knowledge we acquire shall produce no effect upon our conduct." Law tends no less than creeds, catechisms and tests to fix the human mind in a stagnant condition, and to substitute a principle of permanence in the room of that unceasing perfectibility which is the only salubrious element of mind.

THE UNIFORMITY OF LAW

The fable of Procrustes presents us with a faint shadow of the perpetual effect of law. In defiance of the great principle of natural philosophy that there are not so much as two atoms of matter of the same form through the whole universe, it endeavours to reduce the actions of men, which are composed of a thousand evanescent elements, to one standard. It was in the contemplation of this system of jurisprudence that the strange maxim was invented that "strict justice would often prove the

highest injustice". There is no more real justice in endeavouring to reduce the actions of men into classes than there was in the scheme to which we have just alluded of reducing all men to the same stature. If on the contrary justice be a result flowing from the contemplation of all the circumstances of each individual case, if the only criterion of justice be general utility, the inevitable consequence is that the more we have of justice, the more we shall have of truth, virtue and happiness.

From all these considerations we cannot hesitate to conclude universally that law is an institution of the most pernicious tendency.

The subject will receive some additional elucidation if we consider the perniciousness of law in its immediate relation to those who practise it. If there ought to be no such thing as law, the profession of a lawyer is no doubt entitled to our disapprobation. A lawyer can scarcely fail to be a dishonest man. This is less a subject for censure than for regret. Men are the creatures of the necessities under which they are placed. He that is habitually goaded by the incentives of vice will not fail to be vicious. He that is perpetually conversant in quibbles, false colours and sophistry cannot equally cultivate the generous emotions of the soul and the nice discernment of rectitude.

Let us however suppose a circumstance which is perhaps altogether impossible, that a man shall be a perfectly honest lawyer. He is determined to plead no cause that he does not believe to be just and to employ no argument that he does not apprehend to be solid. He designs, as far as his sphere extends, to strip law of its ambiguities and to speak the manly language of reason. This man is no doubt highly respectable so far as relates to himself, but it may be questioned whether he be not a more pernicious member of society than the dishonest lawyer.

The hopes of mankind in relation to their future progress depend upon their observing the genuine effects of erroneous institutions. But this man is employed in softening and masking these effects. His conduct has a direct tendency to postpone the reign of sound policy and to render mankind tranquil in the midst of imperfection and ignorance.

LAW AND WISDOM

The true principle which ought to be substituted in the room of law is that of reason exercising an uncontrolled jurisdiction upon the circumstances of the case. To this principle no objection can arise on the score of wisdom. Law we sometimes call the wisdom of our ancestors. But this as a strange imposition. It was as frequently the dictate of their passion, of timidity, jealousy, a monopolising spirit, and a lust of power that knew no bounds. Are we not obliged perpetually to revise and remodel this misnamed wisdom of our ancestors? to correct it by a detection of their ignorance and a condemnation of their intolerance? But if men can be found among us whose wisdom is equal to the wisdom of law, it will scarcely be maintained that the truths they have to communicate will be the worse for having no authority but that which they derive from the reasons that support them.

It may however be alleged that "if there be little difficulty in securing a current portion of wisdom, there may nevertheless be something to be feared from the passions of men. Law may be supposed to have been constructed in the tranquil serenity of the soul, a suitable monitor to check the inflamed mind with which the recent memory of ills might induce us to proceed to the exercise of coercion." This is the most con-

siderable argument that can be adduced in favour of the prevailing system, and therefore deserves a mature examination.

The true answer to this objection is that nothing can be improved but in conformity to its nature. If we consult for the welfare of man, we must bear perpetually in mind the structure of man. It must be admitted that we are imperfect, ignorant, the slaves of appearances. These defects can be removed by no direct method, but only by the introduction of knowledge. A specimen of the indirect method we have in the doctrine of spiritual infallibility. It was observed that men were liable to error, to dispute forever without coming to a decision, to mistake in their most important interests. What was wanting was supposed to be a criterion and a judge of controversies. What was attempted was to endue truth with a visible form and then repair to the oracle we had erected.

The case respecting law is exactly parallel to this. Men were aware of the deceitfulness of appearances and they sought a talisman to guard them from imposition. Suppose I were to determine at the commencement of every day upon a certain code of principles to which I would conform the conduct of the day, and at the commencement of every year the conduct of the year. Suppose I were to determine that no circumstances should be allowed by the light they afforded to modify my conduct, lest I should become the dupe of appearance and the slave of passion. This is a just and accurate image of every system of permanence. Such systems are formed upon the idea of stopping the perpetual motion of the machine lest it should sometimes fall into disorder.

THE SUPERCESSION OF LAW

This consideration must sufficiently persuade an impartial mind that, whatever inconveniences may arise from the passions of men, the introduction of fixed laws cannot be the genuine remedy. Let us consider what would be the operation and progressive state of these passions provided men were trusted to the guidance of their own discretion. Such is the discipline that a reasonable state of society employs with respect to man in his individual capacity; why should it not be equally valid with respect to men acting in a collective capacity? Inexperience and zeal would prompt me to restrain my neighbour whenever he is acting wrong, and by penalties and inconveniences designedly interposed, to cure him of his errors. But reason evinces the folly of this proceeding and teaches me that if he be not accustomed to depend upon the energies of intellect, he will never rise to the dignity of a rational being. As long as a man is held in the trammels of obedience and habituated to look to some foreign guidance for the direction of his conduct, the understanding and the vigor of his mind will sleep. Do I desire to raise him to the energy of which he is capable? I must teach him to feel himself, to bow to no authority, to examine the principles he entertains, and render his mind the reason of his conduct.

The habits which are thus salutary to the individual will be equally salutary to the transactions of communities. Men are weak at present because they have always been told they are weak and must not be trusted with themselves. Take them out of their shackles, bid them enquire, reason and judge, and you will soon find them very different beings. Tell them that they have passions, are occasionally hasty, intemperate and injur-

ious, but they must be trusted with themselves. Tell them that the mountains of parchment in which they have been hitherto entrenched are fit only to impose upon ages of superstition and ignorance; that henceforth we will have no dependence but upon their spontaneous justice; that if their passions be gigantic, they must rise with gigantic energy to subdue them; that if their decrees be iniquitous, the iniquity shall be their own. The effect of this disposition of things will soon be visible; mind will rise to the level of its situation; juries and umpire will be penetrated with the magnitude of the trust reposed in them.

THE ADMINISTRATION OF JUSTICE

It may be no uninstructive spectacle to survey the progressive establishment of justice in the state of things which is here recommended. At first it may be a few decisions will be made uncommonly absurd or atrocious. But the authors of these decisions will be confounded with the unpopularity and disgrace in which they have involved themselves. In reality, whatever were the original source of law, it soon became cherished as a cloak for oppression. Its obscurity was of use to mislead the inquisitive eye of the sufferer. Its antiquity served to divert a considerable part of the odium from the perpetrator of the injustice to the author of the law, and still more to disarm that odium by the influence of superstitious awe. It was well known that unvarnished, barefaced oppression could not fail to be the victim of its own operations.

The judicial decisions that were made immediately after the abolition of law would differ little from those during its empire. They would be the decisions of prejudice and habit. But habit,

having lost the centre about which it revolved, would diminish in the regularity of its operations. Those to whom the arbitration of any question was entrusted would frequently recollect that the whole case was committed to their deliberation, and they would not fail occasionally to examine themselves respecting the reason of those principles which had hitherto passed unconverted. Their understandings would grow enlarged in proportion as they felt the importance of their trust and the unbounded freedom of their investigation. Here then would commence an auspicious order of things, of which no understanding of man at present in existence can foretell the result, the dethronement of implicit faith and the inauguration of unclouded justice.

Law is merely relative to the exercise of political force and must perish when the necessity for that force ceases, if the influence of truth do not still sooner extirpate it from the practice of mankind.

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